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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEVADA

THOR CONSTRUCTION, INC., a Minnesota
corporation,

Plaintiff,

v.

U.S. DEPARTMENT OF TREASURY-
INTERNAL REVENUE SERVICE; MAXIMUM
ENTERPRISES, LLC, a Nevada Limited Liability
Company,

Defendants.

Civil No. 2:11-CV-01210-JCM-LRL

**UNITED STATES' EX PARTE MOTION
FOR EXTENSION OF TIME TO
ANSWER OR OTHERWISE RESPOND
TO COMPLAINT (FIRST REQUEST)**

On behalf of Defendant, the United States of America¹ (Hereafter "United States"), by and
through its undersigned, by and through its undersigned counsel, respectfully submits this *ex parte*

¹ While plaintiff has named "U.S Department of Treasury - Internal Revenue Service" as a defendant in this matter, it is well established that to the extent the relief requested in a complaint, if granted, would result in a judgment that would expend itself on the public treasury or restrain the federal government from action or interfere with public administration, the suit constitutes an action against the United States. *Dugan v. Rank*, 372 U.S. 609, 620 (1962) citing *Land v. Dollar*, 330 U.S. 731 (1947). Consequently, the instant action is actually one against the United States because the relief sought would expend itself on the public treasury and restrain the federal government from action.

1 Motion for an Extension of Time, until Friday, November 18, 2011, in which to file an answer or
2 otherwise respond to the Complaint filed by Plaintiff Thor Construction, Inc., in the above-captioned
3 case. In support of this motion, the United States avers as follows:

4 1. On September 26, 2011, Plaintiff filed his Complaint in the above-captioned matter. A
5 summons was issued to the United States on the same day.

6 2. Fed. R. Civ. P. 12(a) provides that the United States shall serve an answer to a complaint
7 within sixty days after the United States Attorney is served with the pleading asserting the claim(s). The
8 United States Attorney for the District of Nevada was served with the complaint in this case on August 10,
9 2011. Therefore, the United States' response is currently due on October 11, 2011.²

10 3. The United States Department of Justice, Tax Division, first received a copy of the Complaint
11 on August 17, 2011. The undersigned counsel has requested the IRS to promptly forward its files and views
12 concerning this matter to the Department. The undersigned counsel received authorization to defend this
13 matter via fax on September 30, 2011, and received the administrative files in this matter on Tuesday,
14 October 4, 2011.

15 4. On Thursday, October 6, 2011, undersigned counsel for the United States contacted counsel
16 for Plaintiff regarding an extension of time for the United States to answer or otherwise defend in this
17 matter. Counsel for Plaintiff agreed to an extension of sixty days.

18 5. Defendant Maximum Enterprises, LLC, has not answered in this matter.

19 6. In light of the fact that the Department of Justice only recently obtained the IRS files
20 regarding this case, and in light of undersigned counsel's upcoming trial in the Eastern District of California
21 which is scheduled to begin on October 18, 2011, and estimated to require ten trial days, the United States
22 respectfully requests a sixty day extension of the existing response deadline, or until Friday, December 9,
23 2011, in which to file an answer to the Complaint in this case or otherwise respond.

24 7. This motion is not made for the purpose of delay, but only to allow the Department of Justice,
25 to allow the United States to respond fully and accurately to the complaint in this case.

26
27 ² October 9, 2011, a Sunday, is 60 days from the date the Summons and Complaint were served on
28 the United States Attorney for the District of Nevada. Further, Monday, October 11, 2011, is a federal
holiday. See Fed. R. Civ. P. 6(a)(1)(C).

1 8. This is the first request for an extension of time to answer or otherwise respond the
2 Complaint, and no previous extensions have been granted in any matter in this case.

3 WHEREFORE, the United States respectfully moves the Court to issue an order granting the United
4 States a sixty (60) day extension of time, until Friday, December 9, 2011, to answer or otherwise respond
5 to the Complaint and granting any other relief to which the United States may be entitled. A proposed Order
6 is submitted herewith.

7 Respectfully submitted this 7th day of October, 2011.

8
9
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United States Attorney

11 s/ Colin C. Sampson
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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing UNITED STATES' MOTION FOR EXTENSION OF TIME TO ANSWER OR OTHERWISE RESPOND TO COMPLAINT (FIRST REQUEST) and [PROPOSED] ORDER have been made this 7th day of October, 2011, by depositing copies upon the parties hereto in the United States mail in a postage prepaid envelope addressed to the following:

Noah G. Allison
Cheryl C. Bradford
Martin & Allison, Ltd.
3191 East Warm Springs Road
Las Vegas, Nevada 89120-3147

Attorneys for Plaintiff Thor Construction, Inc.

Maximum Enterprises, LLC
123 N. 9th Street
Las Vegas, Nevada 89101

s/ Colin C. Sampson
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**[PROPOSED] ORDER GRANTING
UNITED STATES' MOTION FOR
EXTENSION OF TIME TO FILE
RESPONSIVE PLEADING**

Before the Court is the United States's Ex Parte Motion to Extend Time to Answer or Otherwise
Respond to Complaint. Upon consideration of the stipulation, and for good cause shown, it is hereby

ORDERED that the United States' Motion is granted. The United States shall have an additional
sixty (60) days, until December 9, 2011, to file a response in this matter.

IT IS SO ORDERED.

Dated this 11th day of October, 2011.


UNITED STATES MAGISTRATE JUDGE

Submitted by:
DANIEL G. BOGDEN
United States Attorney

s/ Colin C. Sampson
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